In the High Court of Judicature at Madras

Dated: 22/04/2004

Coram

The Honourable Mr.Justice V.KANAGARAJ
and
The Honourable Mrs.Justice R.BANUMATHI

Criminal Appeal No.54 of 1997

Azhagarswamy ..Appellant

-Vs-

State
rep.by Inspector of Police,
Tirumangalam Taluk Police Station,
Tirumangalam. ..Respondent

Criminal Appeal filed under Section 374 of Criminal Procedure Code against the judgment dated 03.01.1997 made in S.C.No.241 of 1994 on the file of II Additional Sessions Court, Madurai.

!For Appellant : Mr.G.Krishnamurthy

^For Respondent : Mr.E.Raja,
Additional Public Prosecutor.

:J U D G M E N T
R.BANUMATHI, J.,

Accused is the Appellant in S.C.241/1994 on the file of II Additional Sessions Judge, Madurai. By the Judgment dated 03.01.1997, the II Additional Sessions Judge, Madurai convicted the Appellant / Accused under Sec.302 IPC and sentenced him to suffer Life Imprisonment.

2. Case of Prosecution could be stated thus:-
Deceased AngalaEaswari is the sister of P.W.1 Pandiarajan and P.W.2 Pandiammal. While P.W.1 Pandiarajan was residing at Pulianthoppu, the Accused was residing in the nearby house of P.W.1 and was doing ' Ehy;ghuk;' business with bullock cart at Madurai Pulianthoppu. Accused was already married and having children through his first wife. While the Accused was residing nearby the house of P.W.1, the Accused developed illicit intimacy with deceased AngalaEaswari, due to which the said AngalaEaswari became pregnant. First wife's family of the Accused lived in Madurai Town. The Accused married AngalaEaswari as his second wife and they settled in Keeriyagoundenpatty. A male child was born to the Accused and deceased

AngalaEaswari. While the deceased was living with the Accused, she used to visit the house of her mother Meena and inform P.W.1 and mother Meena about the frequent quarrel by the accused suspecting her fidelity or chastity.

3. On 16.05.1993 - 9.30 PM the Accused went to the house of P.W.1 and informed them that AngalaEaswari is admitted for treatment of injuries due to electric shock at Thirumangalam Government Hospital. P.Ws.1 and 2 and their mother Meena immediately went to Thirumangalam Government Hospital. They came to know that AngalaEaswari was not admitted in that hospital for treatment. When P.W.1 and deceased Meena along with their relatives immediately went to the house of the Accused at Keeriyagoundenpatty, they found AngalaEaswari dead. There was also a marked contusion around the neck as if a rope was tied around the neck. P.Ws.1 and 2 and their mother Meena expressed their suspicion against the Accused. On knowing the same, the Accused ran away from the house and the people gathered.

4. Complaint and Registration of the case: Meena - the mother of deceased AngalaEaswari went to Thirumangalam Police Station and lodged Ex.P.7 - Complaint. P.W.8 - Sub Inspector of Police, Thirumangalam registered the case in Crime No.128/1993 under Sec.174 of Crl.P.C. in Ex.P.8 - First Information Report.

5. Investigation: P.W.8 - Sub Inspector of Police had taken up the preliminary investigation. Scene of occurrence was inspected in the presence of P.W.6 - Village Administrative Officer and one Pichai. Ex.P.4 - Observation Mahazar and Ex.P.9 - Rough Plan were prepared at the scene of occurrence.

6. Inquest: On 17.05.1993 from 10.15 AM to 12.15 PM, P.W.8 conducted the inquest on the body of the deceased AngalaEaswari and prepared the Inquest Report - Ex.P-10. After inquest, the body was entrusted to P.W.7 - Constable Govindaraj for being handed over to autopsy.

7. Post Mortem: Pursuant to the Requisition from the Inspector of Police (Ex.P-1), P.W.4 - Dr.Nagendran conducted autopsy on the body of deceased AngalaEaswari. He noted
an incomplete circular marking present below the hyoid bone.
Internal Examination: On dissection of the neck subcutaneous tissues are congested. Ecchymosis present. Extravasation of blood present.

Opining that AngalaEaswari died of Asphyxia due to compression of the neck by a rope, P.W.4 issued Ex.P.2 - Post Mortem Certificate; and Ex.P.3 - Final Opinion.

8. Further Investigation: P.W.9 - Inspector of Police had taken up the further investigation. On 20.05.1993 - 8.00 AM he arrested the Accused in Melakottai in the presence of P.W.6 and witness Pichai. On being interrogated, the Accused had voluntarily confessed to his guilt. Pursuant to the admissible portion of his confession statement (Ex.P-5), M.O.1 - Nylon rope was recovered from the house of the Accused under Ex.P.6 - Mahazar.

9. On completion of the formalities of the investigation, P.W.11 - Inspector of Police filed the charge sheet against the accused on 01.04.1994 for an offence punishable under Sec.302 IPC.

10. To substantiate the charge against the Accused, in the trial court, P.Ws.1 to 11 were examined. Exs.P-1 to P-13 were marked. M.Os.1 to 8 were remanded to the Court by the Prosecution. The Accused was questioned under Sec.313 of Crl.P.C., about the incriminating circumstances and evidence. The Accused denied all of them and stated that a false case was foisted against him.

11. Upon consideration of the evidence, referring to the injury on the neck, death was found to have been proved to be homicidal. The learned Sessions Judge mainly pointed out the conduct of the Accused in giving false information to P.Ws.1 and 2 and their mother Meena that the deceased AngalaEaswari was seriously injured due to electric shock and admitted in Thirumangalam Government Hospital. Such conduct of the Accused was held against the Accused as relevant under Sec.8 of the Indian Evidence Act. Point urged onbehalf of the Accused on the non-examination of four year old child Karnan was negatived by the trial court and the learned Sessions Judge was of the view that nothing would materialise by the examination of child witness.

12. Assailing the conviction and the findings of the trial court, the learned counsel for the Accused mainly urged that non-examination of four year old child witness is fatal to the Prosecution case. Finding of the trial court is also attacked on the ground that the trial court erred in placing reliance upon the evidence of P.Ws.1 and 2, who are brother and sister of the deceased. The learned counsel further submitted that the trial court erred in drawing the impermissible inferences in referring to the conduct of the Accused that he gave false information to P.Ws.1 and 2 and that he had run away from the scene of occurrence. It is further submitted that in the absence of examination of other witnesses from the surrounding area, it would be unsafe to base the conviction upon the evidence of P.Ws.1 and 2 and the medical evidence.

13. Countering the arguments of the Accused, the learned Additional Public Prosecutor has drawn the attention of the Court to Ex.P.7 - Complaint and submitted that even from the beginning needle of suspicion is pointed towards the Accused. The learned Additional Public Prosecutor countered the arguments of the Accused laying emphasis upon the conduct of the Accused on three aspects;
(i) that deceased was last seen alive in the company of the Accused where they resided in the same house in Keeriyagoundenpatty;
(ii) conduct of the Accused in giving false information to P.Ws.1 and 2 that deceased sustained injuries due to electric shock and admitted in Thirumangalam Government Hospital for treatment;
(iii) conduct of the Accused in running away from the house when P. Ws.1 and 2 expressed suspicion against the Accused.
It is submitted that the trial court has rightly appreciated the evidence and the proved circumstances and the conviction warrant no interference.

14. Upon reassessment of the evidence and materials on record, impugned judgment and submissions of both sides, in our considered view, the following points arise for consideration in this Appeal:
(i) Whether the Accused is proved to be responsible for the homicidal death of the deceased AngalaEaswari ?
(ii) Whether the conviction of the Appellant / Accused warrants any interference ?

15. From the facts and evidence detailed above, it is clear that case of the Prosecution relies upon circumstantial evidence. In every case based upon circumstantial evidence, the question that would need to be determined is whether all the links in the chain of circumstances are so complete so as to establish the guilt of the Accused ruling out the possibility of his innocence.

16. It is not in dispute that the Accused already being a married man and having children through his first wife, developed illicit intimacy with AngalaEaswari. Accused married her as a second wife. Both Accused and AngalaEaswari had a four year old son by name Karnan. Accused and deceased were residing in Keeriyagoundenpatty; first wife of the Accused was living with her children in Madurai Town. The Accused frequently visited the deceased in the residence at Keeriyagoundenpatty. During the questioning under Sec.313 of Crl.P.C., the Accused admitted his marriage with the deceased. He also admitted having four year old son.

17. Deceased is the sister of P.W.1 Pandiarajan and P.W.2 - Pandiammal. Their mother Meena was then alive and was the Complainant in Ex.P-7. In their evidence, P.Ws.1 and 2 have consistently spoken about the quarrel between the Accused and the deceased. P.Ws.1 and 2 have stated that deceased AngalaEaswari frequently used to visit their house and tell them that the Accused was quarrelling with her suspecting her fidelity. We find, by the evidence of P.Ws.1 and 2, Prosecution has proved the ill-will that swelled up in the mind of the Accused to commit the murder of his wife. We are of the view that by proof of motive, Prosecution case is rendered probable.

18. To establish the guilt of the Accused, Prosecution relies upon the following circumstances;
(i) death of AngalaEaswari is homicidal;
(ii) That Accused and deceased were residing in the same house. That deceased was last seen alive in the company of the Accused. The Accused alone had the opportunity to commit the offence;
(iii) conduct of the Accused in giving false news to P.Ws.1 and 2 that AngalaEaswari sustained grievous injuries due to electric shock and admitted in Thirumangalam Government Hospital;
(iv) When P.Ws.1 and 2 expressed their suspicion against the Accused, conduct

of the Accused in running away from the house and his subsequent abscondence.
(v) Arrest of the Accused on 20.05.1993 and recovery of M.O.1 - Nylon rope at his instance.

19. Circular marking injury around the neck was noted by P.Ws.1 and

2. P.Ws.1 and 2 have spoken about the injury which they found on the body of AngalaEaswari. In Ex.P.10 - Inquest Report also, it has been stated thus:-
@///////// ,we;jthpd; fGj;jpd; Kd;gFjpapy; g[jpa fhaj; jGk;g[,Ug; gjhYk; mthpd; jhahh; kPdh jd;kfspd; (m';fhs ,Ug;gjhft[k;. mth;pd; fzth; mHfh;rhkpia re;njfg;gLtjhft[k; TWfpwhh;//////@

20. By the evidence of P.W.4 - Dr.Nagendran and Ex.P.2 - Post Mortem Certificate, death is proved to be homicidal. During autopsy, P.W.4 noted an incomplete circular marking present below the hyoid bone .....
Internal examination: On dissection of the neck subcutaneous tissues are congested. Ecchymosis present. Extravasation of blood present.
P.W.4 opined that the death was due to Asphyxia due to strangulation with an object like M.O.1 - rope. P.W.4 based his opinion on the following;
(i) Incomplete circular marking present below the hyoid bone;
(ii) No possibility for hanging;
(iii)Congestion of the tissues present ecchymosis present;
(iv) Seminal discharge present in the Vagina;
(v) Strangulation of the Windpipe with a Rope.
(vi) Certainly not due to Electrocution.
Thus death is proved to be homicidal by the evidence of P.Ws.1 and 2 and the unimpeachable medical evidence.

21. As we have already noted, the Accused and the deceased were having their residence in Keeriyagoundenpatty. Case of Prosecution is that on the evening of 16.05.1993 the Accused strangulated the deceased with M.O.1 - Nylon rope. The scene of occurrence is the residential house, where the Accused and the deceased lived together. Since Accused and deceased were living together, Accused alone had the opportunity of committing the offence. The opportunity available to the Accused to perpetrate the offence unerringly points to his guilt.

22. Presence of the Accused in the house at the time of occurrence and the presence of Semen in the vagina of deceased AngalaEaswari clearly show that the Accused, who was the husband of the deceased, had coitus with the deceased prior to the occurrence. In our considered view, presence of semen in the vagina of the deceased and that the Accused had access to the deceased is the strong circumstance against the Accused.

23. On the date of occurrence, the Accused diverted the attention of P.Ws.1 and 2 and their mother Meena. At about 9.30 PM, Accused went to the house of P.Ws.1 and 2 and informed them that AngalaEaswari sustained injuries due to electric shock and admitted in Thirumangalam Government Hospital for treatment. In his opinion, P.W.4 - Dr. Nagendran has categorically denied that the death could not have occurred due to Electrocution. Further P.W.5 Thambi working as a Wireman in Tamil Nadu Electricity Board has stated that all the electric wires and the service connection in the house of the deceased were found to be intact. He has expressed his opinion that there was no possibility of causing death due to shock since all the wires were intact. On being diverted, P.Ws.1 and 2 and their mother Meena went to the hospital and found that AngalaEaswari was not admitted to the hospital. Immediately they went to the house at Keeriyagoundenpatty. They found AngalaEaswari dead with

injury over the neck. When P.Ws.1 and 2 expressed their suspicion towards the Accused, the Accused ran away from the scene of occurrence.

24. The learned Additional Public Prosecutor has placed much reliance upon the conduct of the Accused and contended that his conduct in giving wrong information to P.Ws.1 and 2 and running away from the scene of occurrence is very much relevant under Sec.8 of the Indian Evidence Act. The state of mind of the Accused can be judged from the surrounding circumstances. By what had subsequently taken place, the criminal intention of the Accused could be inferred. The criminal intention of the Accused is clear from his conduct in giving false information to P.Ws.1 and 2 and their mother Meena to divert their attention. Likewise, the conduct of the Accused in running away from the place of occurrence when P.Ws.1 and 2 and their mother Meena expressed doubts against the Accused. As rightly submitted by the learned Additional Public Prosecutor, this conduct of the Accused is very much relevant under Sec.8 of the Indian Evidence Act. The learned Sessions Judge was right in inferring the criminal intention of the Accused from his conduct. By careful evaluation of proved circumstances, we find no reason to take a different view.

25. Conduct of the Accused is not merely running away and flight. But his abscondence was nearly for five days. Only after five days, on 20.05.1993 - 8.00 AM the Accused was arrested in Melakottai. On the basis of his confession statement (Ex.P-5), from their residence in Keeriyagoundenpatty M.O.1 - Nylon rope (with 3 knots) was seized under Ex.P.6 - Seizure Mahazar. Recovery of M.O.1 at the instance of the Accused is a strong circumstance against the Accused. No reasonable explanation is forthcoming from the Accused.

26. As we have noted earlier, Accused and deceased had a male child by name Karnan aged about four years. It is contended that there is every possibility of the said Karnan being present in the house having witnessed the occurrence. Main contention urged onbehalf of the Accused is that the non-examination of child Karnan either during the investigation or before the Court is fatal to the Prosecution case. By perusal of the judgment of the court below, it is clear that this point was urged before the trial court and the learned Sessions Judge carefully considered the same and found that by examination of four year old child witness, nothing would materialise. Child Karnan was aged about only four years. Even if examined during investigation or in the Court, it would have been only an evidence of a child witness, who might have been unable to discern between truth and falsehood. The Investigating Officer and the Public Prosecutor, who conducted the trial in the Court of Session, might have formed an opinion that the child Karnan would not have developed proper understanding. The child witness being aged only about four years, Prosecution cannot be faulted for non-examination of the child witness.

27. Equally, we are not impressed upon the point urged on the nonexamination of independent witnesses. The residential house of the Accused and deceased in Keeriyagoundenpatty is surrounded by few other residential houses. On the factual circumstances of the case, Prosecution could not have

examined any witness for the occurrence. The occurrence was inside the house which was between the husband and wife; that too, after the Accused had developed privacy with the deceased and also had coitus with her prior to the occurrence. In that circumstance, it would be unreasonable to expect the Prosecution to examine any independent witnesses.

28. In our considered view, the proved circumstances if put together points to one direction - namely, the guilt of the Accused. The circumstances are fairly established by the Prosecution. We are of the view that the proved circumstances unerringly point towards the guilt of the Accused. In our considered view, the trial court was right in finding that the Prosecution has established the guilt of the Accused.

29. The learned Sessions Judge has carefully analysed the entire evidence and circumstances. Recorded findings are based upon sound reasonings and proper inferences, which according to us, are in conformity with facts and circumstances of the case. The learned Sessions Judge has given cogent and convincing reasonings for accepting the case of the Prosecution. Having carefully considered the evidence, we do not find any reason to interfere with the findings of the trial court.

30. In the result, the judgment of the trial court / II Additional Sessions Court, Madurai, in S.C.No.241/1994 dated 03.01.1997 convicting the Appellant / Accused under Sec.302 IPC and the sentence of imprisonment imposed upon him is confirmed and this Appeal is dismissed.

31. The trial court is directed to take immediate steps for securing the Accused to commit him to prison for serving the remaining period of sentence.

Index:Yes.
Internet : Yes.

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To

1. The II Additional sessions Judge,
Madurai.

2. The Principal Sessions Judge,
Madurai.

3. The Superintendent,
Central Prison,
Madurai.

4. The Collector,
Madurai District,

Madurai.

5. The Inspector of Police,
Thirumangalam Taluk Police Station,
Thirumangalam.

6. The Public Prosecutor,
High Court, Madras.